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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

ERNEST WILLARD DOWNEY,

Defendant and Appellant.

D054410

(Super. Ct. No. SCE281250)

APPEAL from a judgment of the Superior Court of San Diego County, Lantz Lewis, Judge. Affirmed.

A jury convicted Ernest Willard Downey of assault by means of force likely to produce great bodily injury (Pen. Code,¹ § 245, subd. (a)(1)) and battery with serious bodily injury (§ 243, subd. (d)). With respect to the assault count, the jury also found Downey personally inflicted great bodily injury within the meaning of section 12022.7, subdivision (a). After the jury returned its verdicts, Downey entered negotiated

¹ Statutory references are to the Penal Code.

admissions to a prior serious felony conviction allegation (§ 667, subd. (a)) and a prior serious/violent felony or strike conviction (§ 667, subd. (b)). In exchange for the admissions, the prosecution agreed to dismiss eight prior prison term allegations (§ 667.5, subd. (b)). The parties also stipulated to a prison term of nine years with Downey being limited to earning credits for up to 15 percent of the sentence. The trial court sentenced Downey to nine years in prison consisting of the low term of two years for the assault count doubled under the Three Strikes law plus five years for the prior serious conviction felony. The court ordered the great bodily injury allegation dismissed pursuant to section 1385 and stayed the sentence on the battery count enhancement pursuant to section 654.

FACTS

On June 3, 2008, Downey, James Casey, John Pencikowski, and Richard Denoncourt, among others, were housemates in what was a clean and sober cooperative residence for people experiencing problems, such as substance abusers and individuals recently released from prison, who were trying to transition themselves back into society. That afternoon Pencikowski and Downey were sitting at a table in the back of the house and talking about a woman when Casey came in and joined them. Within 10 minutes, Denoncourt walked in and Downey asked him if he thought the woman was a snitch. When Denoncourt gave an affirmative response, Downey started hitting him and knocked him down. Downey got on top of Denoncourt and continued to hit him. Pencikowski pulled Downey off of Denoncourt and the assault ended.

Denoncourt suffered a broken nose and required approximately 10 stitches underneath his eye. At trial Denoncourt testified he was suffering headaches as a result of the incident.

DISCUSSION

Appointed appellate counsel has filed a brief summarizing the facts and proceedings below. Counsel presents no argument for reversal, but asks this court to review the record for errors as mandated by *People v. Wende* (1979) 25 Cal.3d 436. Pursuant to *Anders v. California* (1967) 386 U.S. 738, counsel refers to as possible, but not arguable, issues: (1) whether Downey's waiver of his right to appeal the jury verdict (as part of the plea bargain on his prior convictions) was valid; (2) whether the trial court erred by denying Downey's motion for a mistrial when Casey testified that he and Downey had served time in prison at the same time; (3) whether it was error to permit the read back of Pencikowski's testimony at the preliminary hearing after Pencikowski testified he could not remember the facts underlying the incident; (4) whether the evidence was sufficient to sustain a finding Downey caused great bodily injury to Denoncourt; and (5) whether the evidence was sufficient that Denoncourt suffered serious bodily injury in connection with the battery count.

We granted Downey permission to file a brief on his own behalf. He has not responded.

A review of the record pursuant to *People v. Wende, supra*, 25 Cal.3d 436, and *Anders v. California, supra*, 386 U.S. 738, including the possible issues referred to by

appellate counsel, has disclosed no reasonably arguable appellate issues. Downey has been adequately represented by counsel on this appeal.

DISPOSITION

The judgment is affirmed.

HUFFMAN, Acting P. J.

WE CONCUR:

HALLER, J.

O'ROURKE, J.